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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,120	12/02/2003	Eric T. Best	88265-7618	3342
29157	7590	09/07/2006	EXAMINER	
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135			PEARSE, ADEPEJU OMOLOLA	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/725,120	Applicant(s) BEST ET AL.	
	Examiner Adepeju Pearse	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1,3-4, 6 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Jeffery et al (US Pat. No. 4,081,559). The reference and rejections are incorporated as cited in the prior office action.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2, 7-15 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeffery et al (US Pat. No. 4,081,559) in view of Kincs (US Pat. No. 5,108,769), Chen et al (US Pat. No. 4,338,350), and Alander et al (US Pat. No. 5,486,376). The references and rejections are incorporated as cited in the prior office action.

Response to Arguments

1. Applicant's arguments filed 6/5/2006 have been fully considered but they are not persuasive. Applicant argues that Jeffery fails to disclose or suggest a liquid fat or oil component. However, Jeffery discloses that any edible animal fat or vegetable fat can be utilized. It is well known in the art that fat and oils are used interchangeably and therefore it would be inherent that the edible fat taught by Jeffery would encompass oils, which are liquid. Applicant is

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reminded that the example disclosed by Jeffery is not a representation of the entire disclosure of the invention. The rejection of record does not rely on the alleged example.

4. Regarding the Kincs reference, applicant argues that Kincs specifically teaches using hard fats. However, Kincs teaches away from using hard fats (col 3 lines 32-42) because they make more difficult the handling of coatings at typical enrobing or coating temperatures. Kincs discloses utilizing soybean oil a liquid (see example 2) in a composition.

5. Regarding the advantages of using a liquid fat component, it is inherent that the edible fat taught by Jeffery and Kincs would provide the same advantage of minimizing adhesiveness because it's a similar component.

6. Regarding the Alander and Chen reference, applicant is reminded that these references were utilized as secondary references to show the missing elements not disclosed by Jeffery i.e. emulsifiers and sugar crystals respectively.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Peju Pearse



MILTON I. CANO
SUPERVISORY PATENT EXAMINER